

Appl. No. 09/751,332  
Amdt. Dated 10/06/2004  
Reply to Office Action of May 6, 2004

### REMARKS/ARGUMENTS

This Amendment is in response to the Office Action mailed May 6, 2004. In the Office Action, claims 1-9, 11-20, 22-31, and 33-36 were rejected under 35 U.S.C. § 102(b) as being anticipated by Fischer et al. (USP 5,889,772). Claims 10, 21 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of Bird (USP 6,657,954). Applicants respectfully traverse these rejections in their entirety.

Herein, claims 1, 12 and 23 have been cancelled without prejudice. Claims 9, 20 and 31 have been placed into independent form. Claims 2-8, 13-19 and 24-30 have been amended to alter their dependency. Claim 34 has been amended to include limitations found in original claims 35 and 36.

#### *Rejection Under 35 U.S.C. § 102*

Claims 11-9, 11-20, 22-31, and 33-36 were rejected under 35 U.S.C. § 102(b) as being anticipated by Fischer. Applicants respectfully traverse the rejection because a *prima facie* case of anticipation has not been established.

As the Examiner is aware, in order to anticipate a claim under § 102(b), Fischer must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)(Emphasis added). Applicants respectfully traverse the rejection because Fischer does not teach each and every element set forth in pending independent claims 9, 20, 31, and 34-36.

With respect to claims 9, 20 and 31, nowhere does Fischer teach, explicitly or inherently, an operation, a logic circuit within an access point or software controlling a logic circuit within an access point to automatically adjusting a fragmentation threshold by changing said fragmentation threshold by a divisional factor each time said fragmentation threshold is adjusted, wherein said fragmentation threshold depends on a pre-determined fragmentation threshold divided by said divisional factor.

With respect to claims 34-36, nowhere does Fischer teach, explicitly or inherently, an operation, a logic circuit within an access point or software controlling a logic circuit within an access point to automatically adjust the fragmentation threshold in response to a data rate change of the transmission of said one or more data packets so that the finite time duration for said one or more data packets remains substantially the same. The Office Action focuses on the time duration in the receipt of the acknowledgement (ACK) packets and not the data packets being transmitted.

In light of the foregoing, Applicants respectfully request the Examiner to withdraw the outstanding § 102(b) rejection.

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***Rejection Under 35 U.S.C. § 103***

Claims 10, 21 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of Bird. Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. For brevity, Applicants incorporate the arguments set forth above and respectfully submit that neither Fischer nor Bird, alone or in combination, suggest the limitations set forth in pending claims 9, 20 and 31 upon which claims 10, 21 and 32 respectively depend. Withdrawal of this rejection is respectfully requested.

***Conclusion***

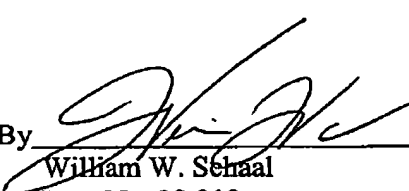
Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: 10/06/2004

By

  
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Susan McFarlane

10/06/2004

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